IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. Appeal No.150 of 2000

Reserved on: 24.5.2007

Date of decision: 16.6.2007

State of H.P. Appellant.

Versus

Girdhari Lal Respondent.

Coram

The Hon'ble Mr. Justice V.K. Ahuja, J.

Whether approved for reporting[1]? Yes.

For the appellant: **Mr. Ashutosh Burathoki, Addl. Advocate General.**

For the respondent: **Mr. Sanjeev Bhushan, Advocate.**

V.K.Ahuja, J.

This is an appeal filed by the Appellant/State of H.P. against the judgment of the Court of learned Judicial Magistrate Ist Class, Dharamshala, dated 27.2.1999 and order dated 4.5.1999, vide which the respondent was held guilty under Sections 279 and 304-A I.P.C. but was released under Section 4 of Probation of Offenders Act.

Briefly stated the facts of the case are that a challan was filed before the learned trial Court under the above sections on the allegations that the respondent was driving Jeep No. DL-04-9683 rashly and negligently on 9.12.1994 and it hit Smt. Prakasho Devi and then one Jai Ram and thereafter it rolled down. The death of said Jai Ram took place and challan was filed before the learned trial Court under the

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment? Yes.

sections mentioned above. Notice of accusation under Section 251 Cr.P.C. was issued to the respondent who pleaded not guilty. The learned trial Court tried the respondent under the above sections and held the respondent guilty, though the specific sections under which he was held guilty have not been mentioned in the concluding para. However, instead of sentencing the respondent, the learned trial Court called for the report of the Probation Officer and released the respondent under Section 4 of the Probation of Offenders Act.

Being aggrieved by the judgment of the trial Court releasing the respondent under Section 4 of the Probation of Offenders Act, the present appeal has been filed by the appellant. A notice of appeal was issued to the respondent.

I have heard the learned counsel for the parties and have also gone through the record.

The first point which arose for determination during the course of hearing of the appeal was as to whether the appeal was to be filed before this Court or before the Court of learned Sessions Judge. The learned Additional Advocate General had relied upon a Division Bench judgment of the Punjab & Haryana High Court in which this question was considered at length and it was clearly held that the appeal was maintainable before the High Court.

The decision in **State (Union Territory), Chandigarh** Vs. **Manjit Singh and others**, **1983 CRI.L.J. 1401,** shows that it was held by the Punjab & Haryana High Court that an appeal to the High Court by the State Government against an order passed by the trial Magistrate under Section 4 of the Probation of Offenders Act, 1958 is competent. The decision is detailed one and a reference has been made to other decisions also and this is clear that the provisions of

Sections 377 and 344 Cr.P.C. were considered and the above conclusion was drawn accordingly. This answers the question raised during the course of argument in regard to the maintainability and as such, I accordingly, hold that the appeal was competent.

Reliance was also placed upon a decision in **Prithvi Raj and others** Vs. **Kamlesh Kumar and another**, **AIR 2004 Supreme Court 4401**, wherein it was clearly held by the Hon'ble Apex Court that there is no justification for confining the right only with the convicted person or even to the State when an order is passed by the Court under Sections 3 & 4 of the Probation of Offenders Act.

The main question which arises for consideration is as to whether the provisions of Section 4 of the Offenders Act could have invoked by trial Judge or not in view of the fact that the respondent was held guilty under Section 304-A I.P.C.

The learned Additional Advocate General has relied upon the decision of Hon'ble Apex Court in **Dalbir Singh** Vs. **State of Haryana**, **(2005) 5 Supreme Court Cases 82**, wherein it was clearly laid down that in view of galloping rate of road accidents in India and its devastating consequences, lenience cannot be shown and the benevolent provisions of Section 4 of the Probation of Offenders Act cannot be treated as applicable to the offence under Section 304-A I.P.C. It was further held that when deciding quantum of sentence deterrence ought to be the prime consideration. It was held that Section 4 of the Probation of Offenders Act was not attracted to such cases and the sentence ought to be deterrent.

In view of the law laid down by the Hon'ble Apex Court in the above case, it is clear that the benefit of Probation of Offenders Act cannot be accorded to the person held guilty under Section 304 A

I.P.C. and the reasons have been clearly given by their Lordships in this judgment also. However, it appears that the learned trial Judge while awarding the sentence did not consider this question as to whether the benefit of Section 4 of the Probation of Offenders Act can be accorded or not to a case like the present one when the respondent was held guilty under Section 304-A I.P.C. It was required of the learned Magistrate to have heard the parties at length in this regard and considered the question whether the appellant/respondent should be released on probation or not and as to what was the law laid down by the Hon'ble Apex Court or by this Court in regard to the conviction under Section 304 I.P.C. However, it appears that the learned Magistrate adopted a shortcut method by releasing the respondent under Section 4 of the Probation of Offenders Act without caring as to what is the law laid down in this regard.

It is, therefore, clear from the above discussion that the findings of the learned trial Court releasing the respondent under Section 4 of the Probation of Offenders Act cannot be said to be correct and are liable to be set aside in view of the decision of the Hon'ble Apex Court referred to above. I refrain from imposing sentence myself since it will deprive the respondent of challenging the findings before the learned Sessions Judge and he will be loosing one right of appeal to challenge the findings before the Sessions Judge. Therefore, the case is remanded back to the trial Court who shall proceed with the question afresh on imposing adequate sentence upon the respondent and shall proceed from the stage after the respondent was held guilty of the accusation framed against him. No opinion is being expressed on the findings of the learned trial Court holding the respondent guilty under various sections and the respondent shall be at liberty to challenge

those findings before the appellate Court as and when the appeal is preferred by him.

The parties shall appear before the trial Court on **17th July, 2007**. In case the respondent does not turn up, steps shall be taken to secure his presence by issuance of warrant of arrest and the case shall be proceed further. In view of the fact that the case is old one, the trial Court shall dispose of the case within three months from the date fixed for the hearing. A copy of judgment alongwith record be sent to the Court concerned.

June 16, 2007 (V.K.Ahuja),J.
(BSS)